

HLU Committee

From: Tom Schnell <tschnell@pbrhawaii.com>
Sent: Wednesday, February 14, 2024 2:34 PM
To: HLU Committee
Cc: Ana L. Lillis; Sunny Rosario
Subject: RE: HLU-11, District Boundary Amendment UA for Molokai Education Center (Kaunakakai)
Attachments: 2024-02-14 DBA UA Transmittal to CM Kama.pdf; Molokai Ed Center expansion - District Boundary Amendment Unilateral Agreement UH 021324.pdf; Molokai Ed Center expansion - District Boundary Amendment Unilateral Agreement UH 021324.docx

Dear Chair Kama,

In response to your letter dated January 22, 2024, regarding the District Boundary Amendment and Change in Zoning for Molokai Education Center (HLU-11), with this email I am transmitting the University of Hawai'i's (UH) proposed Unilateral Agreement and Declaration of Conditions for the State Land Use District Boundary Amendment.

Please see attached:

- Transmittal letter
- Proposed Unilateral Agreement and Declaration of Conditions for the State Land Use District Boundary Amendment (Word file)
- Proposed Unilateral Agreement and Declaration of Conditions for the State Land Use District Boundary Amendment (pdf file)

Tom Schnell, AICP
Vice President



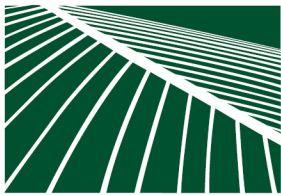
PBR HAWAII

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printed on recycled paper

February 14, 2024

Councilmember Tasha Kama, Chair,
Housing and Land Use Committee
Kalana O Maui Building
200 South High St., 8th Floor
Wailuku, Hawai'i 96793

Via E-mail: hlu.committee@mauicounty.us

HLU-11

SUBJECT: DISTRICT BOUNDARY AMENDMENT FOR MOLOKAI EDUCATION CENTER (KAUNAKAKAI)

Dear Chair Kama:

In response to your letter dated January, 22, 2024 regarding the District Boundary Amendment and Change in Zoning for Molokai Education Center (HLU-11), with this letter I am transmitting the University of Hawai'i's (UH) proposed Unilateral Agreement and Declaration of Conditions for the State Land Use District Boundary Amendment.

This transmittal is via email, and the proposed Unilateral Agreement and Declaration of Conditions is transmitted as a pdf document and a Word document.

Please let me know if you have any questions or need additional information regarding the proposed Unilateral Agreement and Declaration of Conditions for the State Land Use District Boundary Amendment.

Sincerely,

PBR HAWAII

Tom Schnell, AICP
Vice President

LAND COURT SYSTEM

REGULAR SYSTEM

Return By Mail (X) Pickup () : To:

Office of the County Clerk
County of Maui
200 South High Street
Wailuku, Hawai'i 96793

Total Number of Pages: _____

(Including exhibits, notary certification pages, and all other components)

Affects Tax Map Keys (Maui) (2) 5-3-003:013 and (2) 5-3-003:014

**UNILATERAL AGREEMENT AND DECLARATION OF CONDITIONS FOR STATE LAND
USE DISTRICT BOUNDARY AMENDMENT**

THIS INDENTURE, referred to as "***Declaration***" or "***Unilateral Agreement***," is made this, _____ day of _____, 202__, by the following "Declarant," who is the owner of real property located at 375 Kamehameha V Highway, Kaunakakai, Hawaii, referred to as "***the Property***," comprised of 5.27 acres, and identified for real property tax purposes as Tax Map Keys: (2) 5-3-003:013 and (2) 5-3-003:014.

The Declarant is the University of Hawai'i, whose principal address is at 2444 Dole Street, Bachman Hall, Honolulu, Hawaii, and whose authorized contact person is the University of Hawai'i Vice President for Budget and Finance/Chief Financial Officer, who is currently Kalbert K. Young, and any of his successors.

WITNESSETH:

WHEREAS, the Council is considering the considering the Declarant's Petition ("***Petition***") for a State Land Use District Boundary Amendment for the Property, described in Exhibit "1" and more particularly identified in Exhibit "2," State Land Use District Boundary Amendment Map No. 109; and

WHEREAS, the Housing and Land Use Committee recommended passage of the Petition on first reading of said State Land Use District Boundary Amendment for the Property in accordance with Section 19.68.040, Maui County Code; and

WHEREAS, the Declarant has agreed to execute this Unilateral Agreement in accordance with Section 19.68.040, Maui County Code;

NOW, THEREFORE, the Declarant makes the following Declaration:

1. In accordance with Maui County Code. That this Declaration is made in accordance with the provisions of Section 19.510.050, Maui County Code, relating to State Land Use District Boundary Amendments.

2. Binding until Maui County written release. That until written release by the County of Maui, (a) the Property, and all its parts, are held subject to this Declaration's covenants, conditions, and restrictions, which are effective as to and run with the Property, from and after the recording of this Declaration with the Bureau of Conveyances or the Land Court of the State of Hawaii, without the execution, delivery, or recordation of any further deed, instrument, document, agreement, declaration, covenant, or the like with respect to the Property by the Declarant, the County of Maui, or any successor or assign; (b) the acquisition of any right, title or interest *in* or with respect to the Property by any person or entity constitute acceptance of all of the covenants, conditions, and restrictions of this Declaration by the person or entity; and (c) upon any transfer of any right, title, or interest in or with respect to the Property, the transferee assumes, is bound by, and is obligated to observe and perform all of the covenants, conditions, and restrictions of this Declaration;

3. Running with the Land. That this Declaration and all of its covenants, conditions, and restrictions contained are effective as to and run with the land in perpetuity, or until the Declarant notifies the County Department of Planning that any of the covenants, conditions, and restrictions are satisfied by the Declarant, and the Department verifies the satisfaction and provides a written release of the covenant, condition, or restriction;

4. University of Hawaii as Declarant. That the term "Declarant" and any pronoun in reference to it, wherever used in this Declaration, means the singular or the plural, the masculine or the feminine, or the neuter, and vice versa, and includes any corporation or any other entity, and means and includes the University of Hawai'i, the state university and a body corporate of the State of Hawai'i, as Declarant and the Declarant's successors, and assigns;

5. Effective as of date State Land Use District Boundary Amendment ordinance approved. That this Declaration is fully effective on the effective date of the State Land Use District Boundary Amendment ordinance approving the establishment of a State Land Use reclassification from the Agricultural District to the Urban District for the Property;

6. Develop consistent with State Land Use District Boundary Amendment conditions. That the Declarant agrees to develop the Property in conformance with the conditions stated in Exhibit 3 and in the State Land Use District Boundary Amendment ordinance;

7. Conditions reasonable and rationally related to public health, safety and welfare. That the conditions imposed are reasonable and rationally related to the objective of

preserving the public health, safety, and general welfare and fulfill the need for the public service demands created by the Property's proposed use;

8. Conditions enforceable by County of Maui. AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that until released in writing by the County of Maui, the conditions imposed in this Declaration run with the land identified in this Declaration and bind and constitute notice to all subsequent owners, lessees, grantees, assignees, mortgagees, lienors, and any other persons who claim an interest in the Property. The Declarant further understands and agrees that the County of Maui has the right to enforce this Declaration by appropriate action at law or suit in equity against all such persons, with the understanding the Declarant or its successors and assigns may at any time file a petition with the Council or the Department for the removal of the conditions and termination of this Unilateral Agreement, which will be processed in the same manner as petitions for State Land Use District Boundary amendments.

This Declaration may be executed in counterparts, each of which will be deemed to be an original, but all of which, taken together, constitute one and the same Declaration.

Any persons signing this Unilateral Agreement represents that they are duly authorized and have legal capacity to execute and deliver this Unilateral Agreement. Each party represents to the other that the execution and delivery of this Unilateral Agreement and the performance of the party's obligations have been duly authorized and that this Unilateral Agreement is a valid and legal agreement binding on the party and enforceable in accordance with its terms.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the undersigned has executed this Declaration on the day and year indicated on the following notary public certification pages.

DECLARANT:

University of Hawaii

By: _____
Kalbert K. Young
Vice President for Budget and Finance/Chief
Financial Officer

Approved as to Form

Office of University General Counsel

By: _____
Bruce Y. Matsui
Associate General Counsel

Approved as to Form and Legality

By: _____
Print Name: _____
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII)
)
CITY AND COUNTY OF HONOLULU) SS.

On this ____ day of _____, before me personally appeared KALBERT K. YOUNG, to me personally known, who being by me duly sworn, did say that he is the Vice President for Budget and Finance/Chief Financial Officer of the UNIVERSITY OF HAWAI'I, the state university and a body corporate of the State of Hawai'i, and that said instrument was signed on behalf of said UNIVERSITY OF HAWAI'I by authority of its Board of Regents, and said KALBERT K. YOUNG, as said Vice President for Budget and Finance/Chief Financial Officer, acknowledged said instrument to be the free act and deed of said University of Hawai'i.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

| Stamp or Seal |

Notary Public, State of _____

Print Name: _____

My Commission Expires: _____

NOTARY PUBLIC CERTIFICATION

Doc Date: _____ # Pages: _____

Notary Name: _____ Judicial Circuit: _____

Document Description: _____

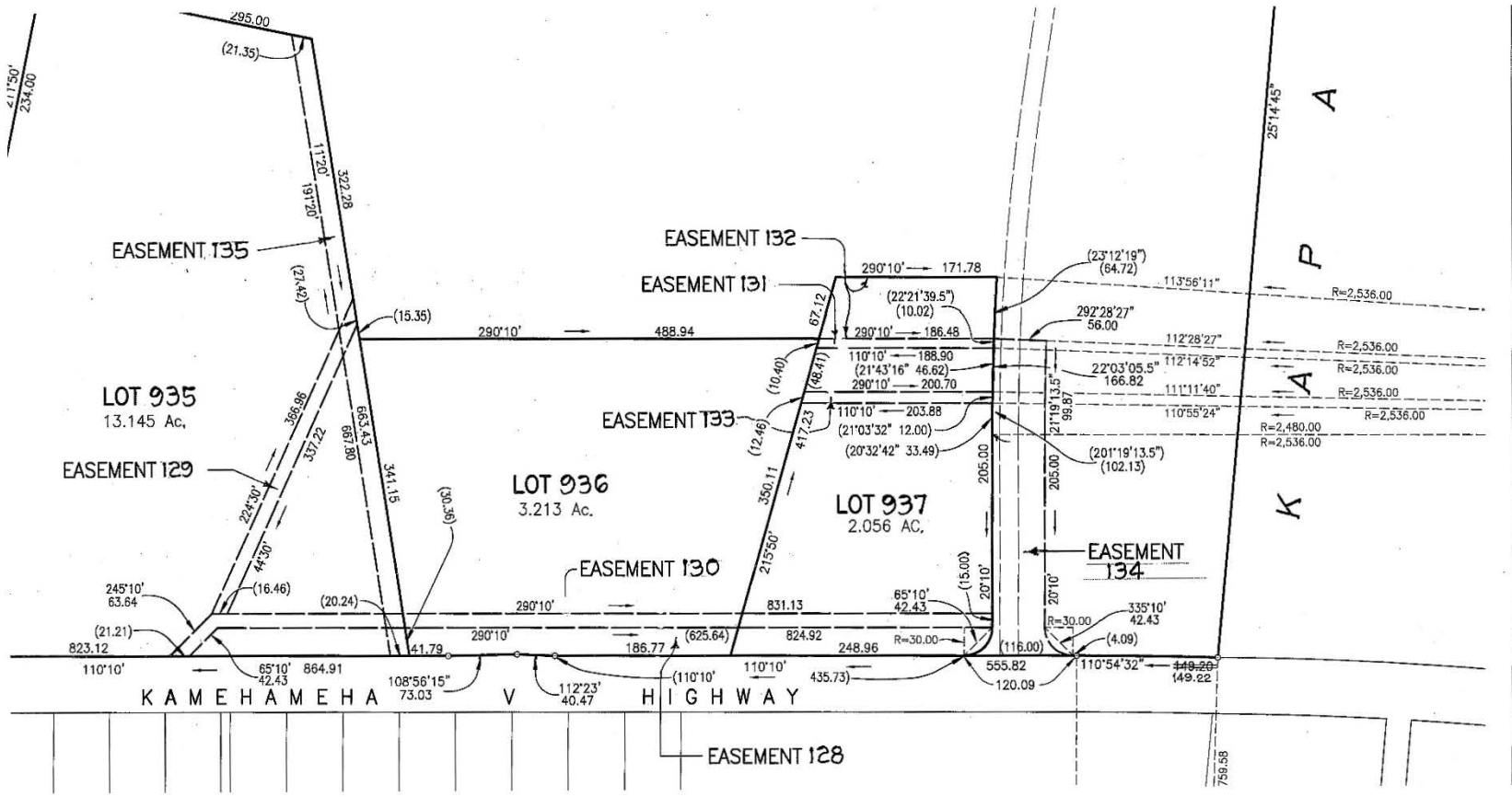
Notary Signature: _____

Date: _____

EXHIBIT "1"

Description of the Property

Legal Meets and Bounds Lot 936 and Lot 937



LAND COURT APPLICATION 632
(MAP 98)

LOT 936

Being Lot 936 as shown on Map 98 of Land Court Application 632.

Land situated at Kaunakakai, Molokai, Hawaii

Beginning at the Southwest corner of this piece of land, being also the Southeast corner of Lot 935 as shown on Map 98 of Land Court Application 632, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU LUAHINE" being 15,688.66 feet South and 648.84 feet West and running by azimuths measured clockwise from true South:

- | | | | |
|----|--------------|-------------|--|
| 1. | 191° 20' | 341.15 feet | along Lot 935 as shown on Map 98 of Land Court Application 632; |
| 2. | 290° 10' | 488.94 feet | along Lot 938-A as shown on Map 104 of Land Court Application 632; |
| 3. | 395° 50' | 350.11 feet | along Lot 937 as shown on Map 98 of Land Court Application 632; |
| 4. | 110° 10' | 186.77 feet | along the North side of Kamehameha V Highway; |
| 5. | 112° 23' | 40.47 feet | along the same; |
| 6. | 108° 56' 15" | 73.03 feet | along the same; |
| 7. | 110° 10' | 41.79 feet | along same, to the point of beginning and containing an area of 3.213 acres. |

Subject, however, to Easements 128 and 130, as shown on Map 98 of Land Court Application 632.



March 22, 2019
Honolulu, Hawaii


Alden S. Kajioka
Licensed Professional Land Surveyor
Certificate Number 6605
Land Court certificate No. 248
License Expires April 30, 2020

Tax Map Key: (2) 5-3-003: 013

LOT 937

Being Lot 937 as shown on Map 98 of Land Court Application 632.

Land situated at Kaunakakai, Molokai, Hawaii

Beginning at the Southwest corner of this piece of land, being also the Southeast corner of Lot 936 as shown on Map 98 of Land Court Application 632, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU LUAHINE" being 15,806.57 feet South and 327.80 feet West and running by azimuths measured clockwise from true South:

1. 215° 50' 417.23 feet along Lot 936 and 938 as shown on Map 98 of Land Court Application 632;
2. 290° 10' 171.78 feet along the same;
3. Thence, along Westerly side of Alanui' Kaimile Street, on a curve to the left with a radius of 2,536.00 feet, the chord azimuth and distance being:
22° 03' 05.5" 166.82 feet;
4. 20° 10' 205.00 feet along the same;
5. Thence, along same, on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being:
65° 10' 42.43 feet;
6. 110° 10' 248.96 feet along the North side of Kamehameha V Highway, to the point of beginning and containing an area of 2.056 acres.

Subject, however, to Easements 128, 130, 131, 132 and 133 as shown on Map 98 of Land Court Application 632.



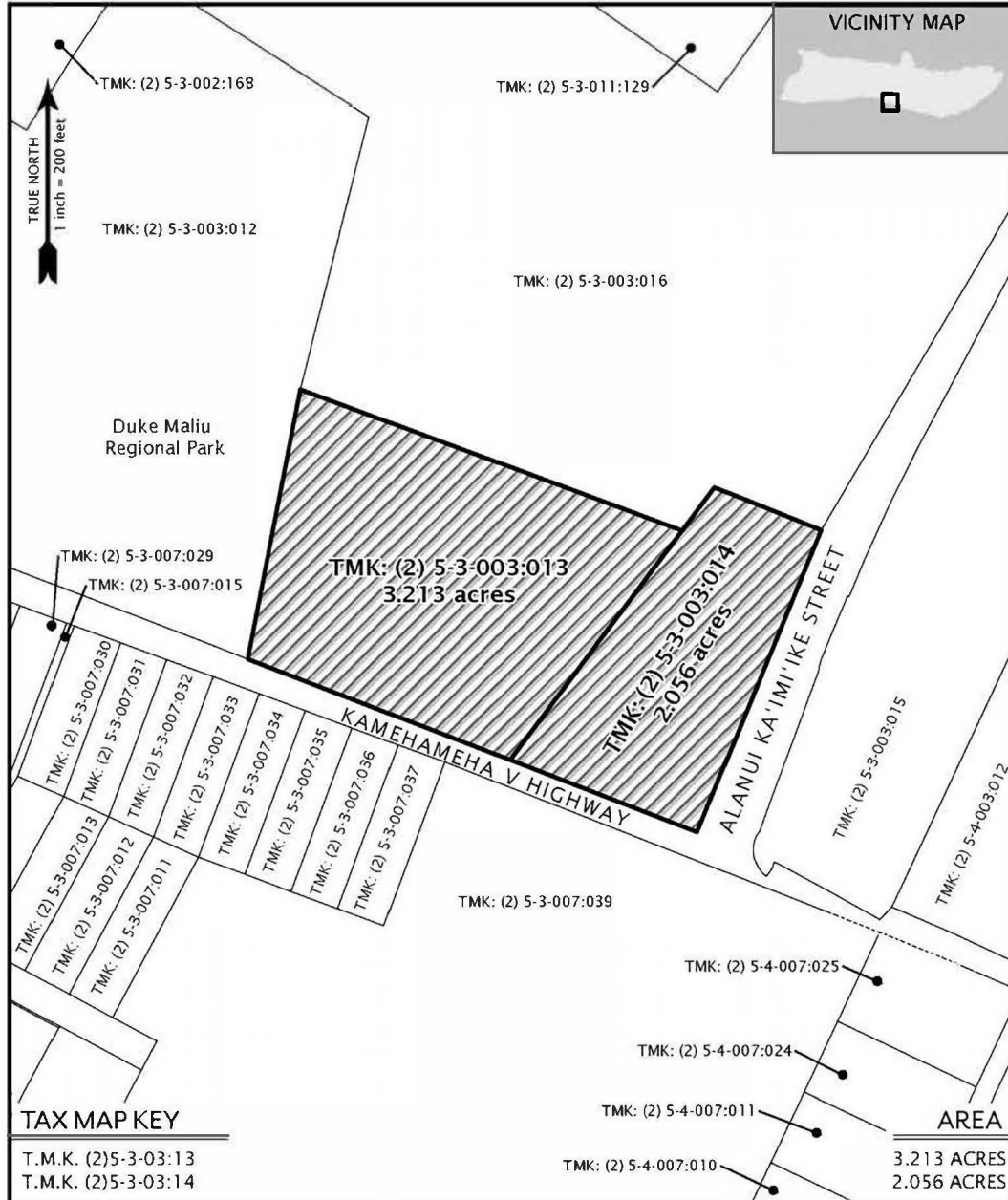
March 22, 2019
Honolulu, Hawaii


Alden S. Kajioka
Licensed Professional Land Surveyor
Certificate Number 6605
Land Court Certificate No. 248
License Expires April 30, 2020

Tax Map Key: (2) 5-3-003: 014

EXHIBIT "2"

STATE LAND USE DISTRICT BOUNDARY AMENDMENT MAP NO. 109



LAND USE DISTRICT BOUNDARY AMENDMENT MAP NO.109

KAUNAKAKAI, MOLOKA'I, HAWAI'I

FROM: AGRICULTURAL DISTRICT

TO: URBAN DISTRICT

EXHIBIT "3"

CONDITIONS

1. Defined terms. All terms defined in the Unilateral Agreement to which this Exhibit 3 is attached shall be applicable to the State Land Use District Boundary Amendment contained in this Exhibit 3 unless otherwise specifically defined herein.
2. Prohibition. There shall be a prohibition on any action that would interfere with or restrain farming operations adjacent to the Property; provided the farming operations are conducted in a manner consistent with generally accepted agricultural and management practices on adjacent or contiguous lands in the agricultural district.
3. Notification. There shall be notification to all prospective developers or purchasers of land or interest in land in the petition area and subsequent notification to lessees or tenants of the land, that farming operations and practices on adjacent or contiguous land in the agricultural district are protected under Chapter 165, Hawaii Revised Statutes, the Hawaii Right to Farm Act, and that the notice shall be included in any disclosures required for the sale or transfer of real property or any interest in real property.